United Nations S/2012/471

Security Council

Distr.: General
21 June 2012
English
Original: Arabic and English

Identical letters dated 20 June 2012 from the Permanent Representative of Libya to the United Nations addressed to the Secretary-General and the President of the Security Council

Upon instructions from my Government, I have the honour to attach herewith the Memorandum on the Arrest of the International Criminal Court Delegation from the Ministry of Foreign Affairs and International Cooperation (see annex).

It would be highly appreciated if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Abdurrahman M. **Shalgham**
Ambassador
Permanent Representative

12-38508 (E) 250612 260612

Please recycle

Annex to identical letters dated 20 June 2012 from the Permanent Representative of Libya to the United Nations addressed to the Secretary-General and the President of the Security Council

[Original: Arabic]

Memorandum on the arrest of the delegation of the International Criminal Court

- In response to Security Council resolution 1970 (2011) of 26 February 2011, which decided that the Libyan authorities should cooperate fully with the International Criminal Court (ICC) and with the Prosecutor of the Court, and pursuant to its commitments in respect of the Court, the Government of Libya, having secured the approval of the Public Prosecutor, received a delegation from the Court on 6 June 2012.

- The basic purpose of the visit was to provide the ICC-appointed counsel for the defence with an opportunity of meeting with the accused, Saif al-Islam Gaddafi, at his place of detention in the city of Zintan and to discuss the possibility of designating another counsel for the defence, one of his own choosing.

- The delegation consisted of the following persons:
  - Ms. Melinda Taylor, defence counsel (of Australian nationality)
  - Ms. Hélène Assaf, interpreter (of Lebanese nationality)
  - Mr. Alexander Khodakov, ICC expert (of Russian nationality)
  - Mr. Esteban Peralta Losilla, Chief, Counsel Support Section (of Spanish nationality)

- During the meeting with the accused, Ms. Taylor handed him, in the presence of the interpreter, a number of documents the contents of which represented a threat to the national security of Libya. One of them was a coded letter from Mohammed Ismail, who had previously been the main aide of the accused while at the same time working as a leading figure in the security and intelligence service with close ties to its former Director, Abdullah al-Senussi. It is noteworthy that those documents were irrelevant for the proceedings of the ICC, and had no connection of any kind with the provision of appropriate legal advice in the case of the accused. Furthermore, spying and recording devices, including a video camera pen and watch, were found in the possession of Ms. Taylor and the other members of the delegation. This was inconsistent with the mandate of the ICC delegation and incompatible with the tasks assigned to the court-appointed counsel for the defence; it was also a flagrant breach of Libyan law and an offence punishable under the criminal legislation in force. Moreover, it was also at variance with the ethical and professional obligations incumbent upon the members of the ICC delegation, and contrary to the provisions of the Code of Professional Conduct for Counsel which was adopted by the Court on 2 December 2005.

- In view of the circumstances and the fact that the offenders had been caught in the act, the Office of the Public Prosecutor decided that an immediate

investigation was necessary. Only two members of the delegation, Ms. Melinda Taylor and Ms. Hélène Assaf, were initially viewed as suspects for interrogation; the Office of the Public Prosecutor ordered the release of the other two members. However, they decided voluntarily to remain out of solidarity with their colleagues.

– Owing to Ms. Taylor's refusal to cooperate with the examining magistrate from the Office of the Public Prosecutor or make any statement, she and her colleague, Hélène Assaf, were placed under house arrest. Ms. Taylor insisted that she would say nothing unless an international defence counsel was present, although the Office of the Public Prosecutor had provided a Libyan lawyer.

– The Ministry of Foreign Affairs and International Cooperation quickly conveyed Ms. Taylor's request for an international counsel to the appropriate officials at the ICC. It is noteworthy that the prolongation of her house arrest has been entirely due to her refusal to cooperate with the Office of the Public Prosecutor.

– On 7 June 2012, the Ministry of Foreign Affairs and International Cooperation informed the ICC what had happened. The ICC, instead of consulting with the Libyan authorities on how to deal with this problem, hastily issued a press release on 15 June 2012 in which it called upon Libya to release the members of the ICC team immediately, to ensure their safety, and to see to it that they were well treated; it said nothing about the offences they had committed or their disregard of professional ethics.

– A meeting between the ICC delegation and the Office of the Public Prosecutor was held on 11 June 2012, and later that day the delegation met with the Public Prosecutor and the team from the Ministry of Foreign Affairs and International Cooperation in charge of cooperation with the ICC. The outcome of these two meetings was an agreement to the effect that arrangements would be made for a team from the ICC to visit the city of Zintan, accompanied by the ambassadors of Australia, Russia, Spain and Lebanon. The visit duly took place on 12 June 2012. In the course of it, the new delegation and the accompanying ambassadors met with the detained ICC members and engaged in direct conversation with them. The visitors also inspected the services and facilities provided by the Libyan authorities in the residence where the detained persons were living, and it is noteworthy that during the meeting the detained persons expressed satisfaction at the good treatment they were receiving and the facilities available to them. At the conclusion of the visit, the ambassadors asked the Libyan authorities to authorize individual visits to the detained persons and to allow them to telephone their families, and the Libyan authorities have promised to respond favourably to that request as soon as the investigation has been completed.

– Pursuant to its commitments under Security Council resolution 1970 (2011), and in a spirit of cooperation to find a solution to this problem, the Libyan authorities acceded to the request of the Court to allow Mr. Andrea O'Shea, a defence counsel, to attend the investigation sessions, which began on 16 June and continued until the evening of 17 June 2012.

– The Prime Minister, Dr. Abdurrahim El-Keib, attaches particular importance to Libya's relations with the ICC, as appears from the fact that he convened three meetings with the Deputy Prime Ministers, the Minister of Justice, the Public Prosecutor and the Deputy Minister for Foreign Affairs and International Cooperation, for the purpose of exchanging views on the most useful means of solving this problem in accordance with the requirements of domestic and international law. The meeting held on Sunday, 17 June 2012, produced a discussion on a road map for expediting negotiations with the ICC within a specified time frame, and for reaching agreement on an effective action and consultation mechanism with a view to ensuring a just outcome for all the parties concerned.

– Further to the investigation, on 18 June 2012 the Ministry of Foreign Affairs and International Cooperation met with the ICC team. A representative of the Office of the Public Prosecutor was also present, as was the legal adviser from the Office of the Prime Minister. The purpose of the meeting was to consider the steps that should be taken by both parties, Libya and the ICC, to reach agreement on a road map leading to a solution to this issue.

– The Government of Libya continues to be committed to its cooperation with the International Criminal Court in order to find a solution that is satisfactory to all parties in a framework of respect for domestic and international law. It also remains committed to cooperation with the Court in respect of procedures concerning the accused Saif al-Islam Gaddafi and his full right to a defence. In return, the Government of Libya expects the ICC to ensure that members of delegations sent to Libya observe professional ethics, respect Libyan law and the sovereignty of the State, and refrain from committing any offences that may constitute obstacles to the establishment of an effective, positive partnership between it and the Court.

Ministry of Foreign Affairs and International Cooperation

19 June 2012